

JUSTICE GOFF IS SCORED IN BECKER DECISION

the trial was grossly unfair to the defendant. Indeed, it is impossible to portray in an opinion the spirit of unfairness which pervades the record from cover to cover."

REVERSAL ON ERRORS BY GOFF.

The reversal was based entirely on errors held to have been committed by Justice Goff during the trial. The question of the weight of evidence against Becker entered in no way into opinion, though it was discussed. Judge Hisecock wrote the prevailing opinion.

Judge Werner held that the conviction should be affirmed because the main facts tended to prove Becker's guilt. He said that the fact that the main witnesses were gamblers, criminals, degenerates and murderers should have nothing to do with the decision. He said that there was nothing to authorise the Court of Appeals to invade the province of the jury "nor to decide in advance what must be done upon another trial upon a similar state of facts."

The Judge discussed the case fully as to the facts and then the rulings of the trial Justice. He declared that there was no error of law committed at the trial which would justify a reversal.

In the gunmen's case the Court said that the only question to be decided was whether the Court had erred. It was apparent, the Court of Appeals held, that neither unfairness nor unreasonable error was shown in the case.

Practically all responsibility for errors committed at the trial was placed upon Justice Goff. The only serious error attributed to District Attorney Whitman was that in his opening address he referred to Becker as a "grater." Becker not being on trial for grafting, it was held, the District-Attorney should not have made this statement, because it might have prejudiced the jury.

The Court said that it was impossible in an opinion to portray the unfavorable atmosphere that existed at the time of the trial, but pointed out some of the rulings of Justice Goff which were held to have prejudiced the defendant's case. Some of them follow:

At the opening of the case Justice Goff threatened to have Mr. McIntyre, senior counsel for Becker, removed by an officer because he objected to remarks of the District-Attorney.

CRITICISED TRIAL FOR ITS SPEED.

Justice Goff frequently criticised Becker's counsel for trivial peculiarities in their forms of questions, intervened to protect the State's witness on cross-examination, and on one occasion when Becker's counsel asked Mr. Whitman to concede a fact the Justice said:

"No, I will not let him concede it."

The haste of the trial also was referred to.

Repeatedly Justice Goff refused to allow Becker's counsel to have papers they were entitled to that were in the possession of the District-Attorney and some of the Justice's rulings "passed beyond the limits of discretion and were erroneous as matters of law."

It was pointed out that Becker's counsel should have been given the fullest opportunity to cross-examine Rose, Webber, Vallon and Schepps, who were in constant communication and conferred with each other and were "engaged in the common undertaking of attempting to save their own lives by placing in forfeit that of Becker's."

The different attitude that the Justice took toward witnesses caused the Court of Appeals to remark on it. Witnesses who proved disappointing to the Justice were treated with harshness and manner of suspicion, it was declared, while Schepps, the State's star witness, was protected by the Justice in various ways.

Witnesses were asked questions by Becker's counsel which were extended by Justice Goff, but later, when the District-Attorney recalled the witnesses, the identical questions extended were put to them by orders of the Court, the opinion declared.

Much space in the opinion was devoted to Justice Goff's order that Mr. McIntyre conclude his examination of Jack Rose on the same day on which he was called. This was the day that Mr. McIntyre pleaded physical and mental exhaustion, and when he said he could go no further the

Becker Receives News Calmly; Gunmen Stunned

The news that Becker had been granted a new trial reached Sing Sing at 2 o'clock this afternoon. Information about the confirmation of the verdict of the jury in the case of the four gunmen was awaited before the prison authorities made any move to notify the men interested.

At 2:30 o'clock the full import of the decision of the Court of Appeals had been learned at the prison. Warden Clancy was not in the institution. The task of notifying Becker and the gunmen fell upon Principal Keeper Connaughton and a member of the Warden's staff.

Becker, who has never lost his nerve from the moment of his arrest, received the news calmly. He has been confident all along that he would be granted a new trial.

The good news was first broken to Becker, "Dago Frank" Cronk, "Lefty Louis" Rosenberg, "Whitey Lewis" Mueller and "Cyp the Hood" Horowitz listened breathlessly. It was not necessary to tell them directly that the Court of Appeals had not interfered with their conviction. They knew it instinctively when Becker's informant stopped with the information to Becker.

The four gunmen were stunned by the news that their last hope of escape from the electric chair was gone. The Sing Sing authorities never give out any information as to the happenings in the death house, and in the absence of Warden Clancy nothing more than the bare facts could be learned. It was stated that Becker had prepared or was about to prepare a statement to the press.

Court said time was being "wasted" and terminated the examination.

The record, it was declared, makes it plain that the controlling purpose of Justice Goff was not to save time but to compel the defendant to close his cross-examination of Rose so that the witness might not be given an opportunity during adjournment to "re-create" his story.

RULING WAS TO PROTECT ROSE.

It was the contention of the prosecution that the examination of Rose was completed that day in order that he might not have an opportunity to take up his story with Webber, Vallon and Schepps. Of this phase Justice Hisecock said:

"It is unnecessary to consider whether the trial Justice was actuated by these precise considerations. I assume for the purpose of this discussion that his rulings were inspired by motives which he deemed to be praiseworthy and in the interest of justice. But, nevertheless, and however commendable these may have seemed in determining whether his rulings were erroneous and injurious to the defendant, it becomes necessary to consider what the results of them were, and I am obliged to confess that the only substantial and apparent consequences were those suggested by the defendant.

"Rose was concededly the most important witness of the prosecution, if, as claimed by the defense, a wicked conspiracy was framed by him and his associates to throw upon the defendant the responsibility for Rosenthal's murder and thereby secure immunity and save their lives. Rose was clearly the inventor and chief promoter of this conspiracy.

"The most apparent danger was the one of a shift or 're-creation' in his evidence which seemed to affect the mind of the trial Justice. This danger, if it existed, was one which was ill for the prosecution.

Attention is called to the fact that the error of the course which was followed was practically conceded by recalling Rose at the close of the case and offering to allow the defendant then to complete his cross-examination.

Of Justice Goff's charge to the jury it is said that he defined with accuracy many of the principles of law which governed the jury and "then outlined in much detail and most effectively the claims of the prosecution and the evidence which had been produced to support those claims, leaving it to the jury with few and meagre exceptions to evolve from their own unaided memories the recollection of any arguments or evidence in behalf of the defendant.

"No 're-creation' of his story was a source of danger to the defendant, for no matter what form it took, an inability or unwillingness on the part of Rose to tell upon cross-examination after adjournment the same story which he had related upon his direct examination would discredit him and inure to the benefit of the defense. We do not think that it was the duty of the trial Justice to protect the prosecution against this danger by any such unusual course as was pursued. The defense should have had an opportunity for a searching, complete and advantageous cross-examination of Rose such as was not afforded at the end of long and unusual hours, when counsel was exhausted mentally and physically."

"In his extended remarks concerning the witness Rose and which seemed to us to have assumed somewhat the form of an argument in favor of his credibility, no attention is called to the fact that he had saved his own life by agreeing to give evidence against Becker; no reference is made to that aspect of the case so vigorously urged by the defendant that he and his associates had framed and were testifying under a conspiracy to convict Becker for the purpose of saving themselves and that the harmony of their testimony might be the result of such conspiracy rather than proof of truthfulness; no reference is made to any of the many witnesses called by the defendant to contradict the People's evidence."

BECKER'S COUNSEL RESPECTED COURT.

While Becker's counsel may have been obstructive, the opinion said, there was no evidence that they ever were disrespectful to the Court.

Some of the least important errors in the case might be overlooked, it was pointed out, if the evidence of guilt had been so clear that the Court might have believed justice had been done in spite of them, but such was not the case. The fact that the evidence against Becker was that of degenerates and criminals caused the Court of Appeals to be unwilling to say, the prevailing opinion stated, that the rulings, on the whole, did not "involve substantial errors or that it was so clear that the defendant should be executed that they might be disregarded."

"The fundamental demand of our law is that the accused shall have a fair trial and that if that right has been infringed," the opinion concluded, "not in respect of mere technicalities, but in substantial matters, and however undesignedly, he shall have another opportunity to meet his accuser and establish his innocence. That is our opinion in the present case. Under the rulings of the court the defendant did not have that manner of trial which the law guarantees to him. His counsel was hampered and embarrassed; his case was discredited and weakened; full and impartial consideration by the jury was impeded and prevented. He never had a fair chance to defend his life, and it would be a lasting reproach to the State if, under those circumstances, it should exact its forfeiture."

The Judges who concurred with Judge Hisecock's opinion were Miller, Cuddeback, Chase, Collin and Hogan.

After referring to the circumstances of Rosenthal's murder, Judge Hisecock first discusses at considerable length the character of the evidence which was produced against Becker by the prosecution and says that notwithstanding the zealous efforts of the very able District-Attorney absolutely no evidence was given on the trial directly tending to connect the defendant with the murder by other than six witnesses who gave evidence of incriminating conversations with him. These witnesses were Luban, Hallen, Rose, Webber, Vallon and Schepps, and concerning them the opinion says:

"One of them, Luban, was produced for the purposes of the trial by the criminal authorities of a neighboring State, where he was confined in jail on some conviction or charge whereof the nature does not appear. 'After being brought to New York and before going on the stand this witness, in a manner which we cannot but regard suggestive, was given an opportunity for conference with Rose, the chief witness for the prosecution and who was immediately to follow him upon the stand. Their evidence was entirely harmonious. Another witness, Hallen, was a degenerate lawyer who also was temporarily delivered from jail to be a witness. In addition to the impeachment of their evidence furnished by their characters and by the direct contradiction of other witnesses, much of the testimony of these men is, as it seems to us, inherently improbable and unworthy of belief.

Three of the other witnesses were Rose, Webber and Vallon, gamblers,

Whitman Keeps Silent; Rumors About Gunmen

District-Attorney Whitman said this afternoon: after the decision of the Court of Appeals had been received:

"I cannot discuss the opinion until I have read it. The District-Attorney is the last person in the world who desires to see a conviction stand if it is not justified in law."

No sooner had the news of the reversal of the Becker conviction reached the Criminal Courts Building than the report became current that at least two of the convicted gunmen will open negotiations at once with the District-Attorney to turn State's evidence. Of course the object of the acceptance by Mr. Whitman of evidence from the murderers of Rosenthal would be to strengthen his case against Becker on a second trial.

It is now known that while the gunmen were in the Tombs awaiting trial two of them offered to turn State's evidence in consideration of being let off with a sentence of twenty years. In the past month, since it became pretty definitely known that the Court of Appeals would decide in Becker's favor, Charles G. P. Wahl, counsel for the gunmen, has had several conferences with the District-Attorney.

In case the District-Attorney should enter into negotiations with the gunmen Gov. Glynn would have to figure in the proceedings. He has the sole power now to commute the sentences of any or all of the four convicted gang murderers.

lawbreakers already referred to. Undisputedly they were guilty of the murder of Rosenthal. Soon after it occurred their complicity in hiring the men who actually killed him was established and there was no question that they had forfeited their lives and were subject to the punishment of death.

"But they claimed that the defendant had instigated them to commit this dreadful crime, and by virtue of this claim they secured from the District-Attorney, with the consent of the Court, as the stipulation recites, an agreement in writing giving immunity to them, conceded murderers, if they would furnish evidence tending to convict Becker, who thus far had only been accused of the crime.

"The remaining witness was Schepps, a gambler and law-breaker, and the intimate of and more or less dependent upon Rose. While the presiding Justice permitted the jury to find that Schepps was not an accomplice of Rose and the others and therefore not guilty like them of the murder of Rosenthal, some of the members of the Court believe that that finding was opposed to the overwhelming weight of the evidence."

SENTENCED TO VISIT HIS SWEETHEART ONLY ONCE EVERY 7 DAYS

Young Forger, Who Spent Money on Her, Is Free on Condition.

Henry E. Gibney, a store clerk of No. 322 State street, Brooklyn, was sentenced by County Judge Dike in Brooklyn to-day to spoon with his sweetheart only once a night a week. Gibney pleaded guilty to forger in the third degree, getting money on false petty cash expense checks amounting to \$50.

"The Court is informed you are in difficulties because you have had your mind on a young woman rather than on the interests of your employer, and that the small sum which you have obtained have been used in her entertainment."

"Will you promise the court that you will repay to your employer and that until such repayment is made you will visit your young woman friend only one evening a week?"

"I will," said young Gibney sheepishly.

"Sentence is suspended," said Judge Dike.

A young woman in the first row of spectators leaped to Gibney's side. They walked together from the courtroom. Once outside the door they went into a clinch.

"We will call this the last day of the first week," said the girl fondly, as she went out of the building clinging to his arm.

KILLED BY SNOW SHOVELLER

Made Fun of Gang and Head Hit Pavement When Knocked Down.

James Henry of No. 76 Third avenue poked fun at a group of Italian snow shovelers at Third avenue and Forty-seventh street this afternoon until his countenance was so infuriated that he struck him in the jaw. Henry fell to the sidewalk and his head hit the pavement. He died almost instantly. The Italian jumped on a car and disappeared. A dozen detectives from the East Fifty-first street station tried to learn the Italian's identity, but the others all declared they did not know him and Captain 84, rental for the post-office station. He pleaded not guilty to these charges.

Leonis Post-Office Official Pleads Guilty.

Bert B. Andrews, Assistant Postmaster at Leonis, N. J., pleaded guilty when he was arraigned in Newark to-day to four indictments charging that he had opened and detained letters from United States Senator William Hughes. Two other indictments had been brought against Andrews, charging that he made a false claim against the Government for \$240 instead of the actual \$24 rental for the post-office station. He pleaded not guilty to these charges.

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LOST, FOUND AND REWARDS

MEN ON THE FORCE DISLIKE BECKER BUT GLAD HE WON.

The announcement that Becker was to have a new trial occasioned no surprise in police circles. It had been expected.

"The force has no use for Becker," said an old-time official of the department. "We think he let himself be used by various Commissioners for all sorts of dirty work and frame-ups which got a lot of good men in bad and drove some of them out of the department."

"There isn't a doubt that he was to blame for the Curran investigation and for the racking which the force has been getting on all sides ever since, but he certainly was too shrewd a man to put himself in the power of that gang of grafting rammers and gunmen. I don't think he's got a friend on the force, but at the same time every one's glad to see him get a new trial."

"We felt certain he would. First, because they made his lawyer, John Hart, divulge conversations he had had with Becker in the capacity of lawyer and client, and second, because Sam Schepps' testimony was admitted. If that fellow wasn't an accomplice then nobody was. They had no more right to use his testimony to corroborate those than to let Rose corroborate Bridget Webber. They were all in it together, so far as there was anything to be in."

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It is hardly probable that Becker will be released from the quarters of the condemned in Sing Sing and returned to the Tombs before Thursday. There are formalities of the law to be carried out.

The order sending back the record of the case from the Court of Appeals to the Criminal Branch of the Supreme Court with directions to give Becker a new trial will be served upon Edward H. Carroll, Deputy Clerk of the Criminal Branch tomorrow. After conferring with the District-Attorney and counsel for the defense, Mr. Carroll will issue a warrant calling upon Warden Clancy of Sing Sing prison to turn Becker over to the custody of the Sheriff of New York County.

Counsel for Becker will make every effort to get their client out of Sing Sing to-morrow. If the matter is expedited they may succeed.

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BECKER'S LAWYER SAYS POLICEMAN CAN'T BE TRIED AGAIN.

John F. McIntyre, who was chief counsel for the defense in the trial of Becker, said when told of the decision of the Court of Appeals:

"Of course the decision is just what I expected. I never entertained a doubt as to the outcome of the appeal, for every semblance of fair play was denied Becker throughout the trial."

"From what I have heard, although I have not as yet received a copy of the decision, the case has been reversed in such a way as to preclude the trial of the defendant again. I understand that Sam Schepps has been held to be an accomplice as a matter of law and that the court deemed it unwise to judge with human life through any such aid as the incredible testimony of such witnesses as Rose, Webber and Rubin."

"Also I understand that, in the decision there is a pretty strong reference to the attitude of Justice Goff toward the counsel for the defense."

GUNMEN'S COUNSEL SAYS DECISION WAS A GREAT SURPRISE.

Former Magistrate C. G. F. Wahl, who was counsel to the four gunmen, said this afternoon he would rather not discuss the finding of the Court of Appeals until he has thoroughly digested the opinion.

"Of course, it comes as a great surprise," he added. "It would be unfair, however, for me to express an opinion regarding the case as it stands to-day until I have looked over the papers."

"Would you classify the four gunmen along with Becker in so far as a new trial is concerned?" he was asked.

"I do not want to go into that phase of the matter," he said.

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